

MARIA C. CAWLEY  
JOHN J. CAWLEY

IBLA 81-366, 81-367

Decided January 26, 1982

Appeals from decisions of Montana State Office, Bureau of Land Management, dismissing protests with respect to oil and gas lease applications. MTA-Sims-013, MTA-Sims-014.

Affirmed (IBLA 81-366); reversed and remanded (IBLA 81-367).

1. Accounts: Payments--Oil and Gas Leases: Applications:  
Drawings--Oil and Gas Leases: Applications: Filing

An American Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2, which specifically requires that where remittance is by money order it must be by either post office or bank money order.

2. Accounts: Payments--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Competitive Leases-- Payments: Generally

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

3. Oil and Gas Leases: Applications: Generally-- Regulations: Interpretation

Regulations should be so clear that there is no basis for a simultaneous oil and gas applicant's noncompliance with them,

and this Board will not enforce a prohibition against bank personal money orders under 43 CFR 3112.2-2 where the regulation does not specifically exclude such from the term bank money order.

APPEARANCES: Jason R. Warran, Esq., Washington, D.C., for appellants.

#### OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Maria C. Cawley and John J. Cawley appeal from separate decisions of the Montana State Office, Bureau of Land Management (BLM), dated January 29, 1981, dismissing their protests of BLM's rejection of oil and gas lease applications designated MTA-Sims-013 and MTA-Sims-014, respectively. 1/ BLM rejected the applications because it found the remittances to be unacceptable under 43 CFR 3112.2-2.

Maria Cawley filed an application for parcel MT 146 for the November 1980 drawing. Her remittance was in the form of an American Express money order. John Cawley filed applications for parcels MT 2 and MT 146 for the same drawing. His applications were accompanied by two Citibank money orders. BLM returned the applications and filing fees because it found the remittances unacceptable. The appeals were docketed as IBLA 81-366 and IBLA 81-367, respectively.

Reference to a copy of the rejected instrument in Maria Cawley's case file discloses that it is identifiable as an "American Express Money Order," issued by the American Express Company and "payable thru First National Bank Denver, Colorado." The money order was signed by Maria Cawley with the Bureau of Land Management as payee. Copies of the money orders submitted by John Cawley show that they were issued

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1/ Appellants allege procedural error on BLM's part in handling the appeal of these cases. Appellants explain that BLM returned their remittance and applications and that they filed notices of appeal from BLM's action. Appellants contend that the filing of these notices of appeal removed BLM's jurisdiction over the cases. Appellants allege that it was incorrect for BLM to treat these original notices of appeal as protests.

43 CFR 4.410 provides in part that "any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management \* \* \* shall have the right to appeal to the Board." BLM returned the remittances and applications accompanied by a "RETURN OF DRAWING ENTRY CARD NOTICE." BLM apparently treated appellants' first notices of appeal as protests because it had not issued formal decisions. Regardless of the procedure followed by BLM, we find that appellants have not been prejudiced in that BLM properly regarded the decision as stayed and declined to implement it (i.e., issue the subject leases) pending resolution of the appeal.

by "Citibank, N.A., New York, N.Y." and were signed by John Cawley with the Bureau of Land Management as payee. The instruments also specify the amount of money to be paid, which amount, together with the name of the bank, has been imprinted by machine. The instruments were not signed by an official of the bank, but the bank's name appears in the upper left-hand corner, and the bank's serial number for the money orders appears in the upper right-hand corner.

The pertinent regulation, 43 CFR 3112.2-2(a) (45 FR 35164 (May 23, 1980)), requires the filing fee to "be paid in U.S. currency, Post Office or bank money order, bank cashier's check or bank certified check."

The Director, BLM, issued Instruction Memorandum No. 80-635 (July 14, 1980), and subsequent elaborations thereon, Change 1 (Sept. 5, 1980) and Change 2 (Nov. 3, 1980), to the State Directors, in which he set forth the criteria for rejection of remittances for simultaneous oil and gas filing fees.

The Montana State Office, BLM, issued a "NOTICE TO THE PUBLIC-ACCEPTABLE FORMS OF REMITTANCE FOR SIMULTANEOUS OIL AND GAS LEASE APPLICATION FILING FEES" in which it interpreted 43 CFR 3112.2-2(a). The Director's memoranda dated September 5, 1980, and November 3, 1980, and the Montana State office notice stated that the regulations do not permit acceptance of either "[m]oney orders issued by express companies, or telegraph companies" or "[p]ersonal money orders (even if issued by banks)."

In their statements of reasons, appellants contend that the purpose of 43 CFR 3112.2-2(a) was to eliminate dishonored personal checks; that the American Express and Citibank money orders are bank money orders for the purpose of the regulation and should have been accepted; and that to the extent BLM Instruction Memorandum No. 80-635 and various State Office notices that "explain" the regulation differ from the regulation, the conflicting instructions and notices are null and void.

Accompanying her statement of reasons, Maria Cawley submitted a statement from the First National Bank, Denver, Colorado, which notes that funds for appellant's American Express money order are fixed by an authorized agent of American Express to coincide with the exact amount on deposit and that the money order is payable through the First National Bank. John Cawley submitted a statement from Citibank which verifies that two money orders for \$10 each were issued at the Crosby Avenue Branch of Citibank. He contends that a money order purchased from and drawn on that bank must be backed by sufficient funds on deposit with the bank to cover the amount of the money order. Both appellants allege that their money orders are of the type allowed by the regulation.

[1] We shall first consider the appeal of Maria Cawley, IBLA 81-366, to determine whether American Express money order is an acceptable form of remittance under 43 CFR 3112.2-2(a). While money orders are acceptable under 43 CFR 3112.2-2, the regulation clearly

states that they must be either post office or bank money orders. Since appellant's money order was neither of these, it was properly rejected by BLM, and no new drawing is required under 43 CFR 3112.3-2. Michaela M. Fitzpatrick, 55 IBLA 108 (1981).

[2] We shall next consider the Citibank money orders submitted by John Cawley, IBLA 81-367. The nature of and differences between bank money orders and bank personal money orders within the context of 43 CFR 3112.2-2 were recently examined by this Board in Charles J. Rydzewski, 55 IBLA 373, 88 I.D. 625 (1981). Therein, we noted:

A bank money order has been defined as "an instrument issued by an authorized officer of a bank and directed to another, evidencing the fact that the payee may demand and receive upon indorsement and presentation to the bank the amount stated on the face of the instrument; such an instrument is paid from the bank's funds and liability for payment rests solely on the issuing bank." 2 Anderson, Uniform Commercial Code, § 3-104:20 (2d ed. 1971). A personal money order issued by a bank for a consideration accepted as adequate by the bank is a purchase of the credit of the bank and constitutes a means of establishing or transmitting that credit so that once issued to the purchaser it is no longer revocable by the bank. 10 Am. Jur. 2d, Banks § 545 (Supp. 1980). Thus, it would appear that the payee of a money order issued by a bank may be assured that funds to cover the instrument have been transferred to the bank.

Id. at 376-77, 88 I.D. at 626-27.

As this Board noted in Rydzewski, however, an essential difference between the normal bank money order and the bank personal money order lies in the fact that the latter, unlike the former, entails no liability until acceptance and thus is subject to a stop payment order. See also Ross L. Kinnaman, 48 IBLA 239 (1980). The question presented by the appeal of John Cawley is whether this difference precludes acceptance of appellant's money orders.

[3] While pointing out the distinction between bank money orders and bank personal money orders in Rydzewski, the Board reasoned that, since 43 CFR 3112.2-2 did not specify what types of money orders issued by banks were acceptable, personal money orders issued by a bank should be accepted. Charles J. Rydzewski, 55 IBLA at 379, 88 I.D. at 628. John L. Messinger, 56 IBLA 1 (1981). A regulation should be sufficiently clear that there is no basis for an oil and gas applicant's noncompliance with it. W. W. Priest, 55 IBLA 398 (1981). Charles J. Rydzewski, 55 IBLA at 379, 88 I.D. at 628. See Johnson v. Udall, 292 F. Supp. 738, 750 (C.D. Cal. 1968). As we said in W. W. Priest, supra at 400:

Even were we to assume that the Department had meant to exclude bank personal money orders from the term "bank money order," it should have so stated in the regulation itself. Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971); A. M. Shaffer, \* \* \* [73 I.D. 293 (1966)]. Absent a clear directive of which all individuals could be charged with constructive knowledge, we will not enforce a prohibition against bank personal money orders under 43 CFR 3112.2-2.

John Cawley's applications should be included in reselections in accordance with the reselection procedures set forth in 43 CFR 3112.3-2.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from in IBLA 81-366 is affirmed. The decision appealed from in IBLA 81-367 is reversed, and the case file is remanded for further action consistent with this decision.

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Gail M. Frazier  
Administrative Judge

We concur:

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C. Randall Grant, Jr.  
Administrative Judge

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Bruce R. Harris  
Administrative Judge

